Filed 5/8/12 P. v. Johnson CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. KEVIN DARNELL JOHNSON, Defendant and Appellant.	B229931 (Los Angeles County Super. Ct. No. MA048457)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kathleen Blanchard, Judge. Affirmed.

Edward H. Schulman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury found Kevin Johnson guilty of first degree murder with firearm allegations also found true. He was sentenced to a term of 50 years to life in state prison. Johnson appeals, claiming insufficiency of the evidence and sentencing error. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On March 2, 2010, at 7:23 p.m., Johnson called 911 and told the operator he and his fiancé (Ronisha Chatman) were "sitting there playing around with a gun—just playing around and she got shot." He said Chatman was shot in the stomach and was "bleeding bad." He said, "I swear this is just an accident." Later in the conversation, while the dispatcher was trying to help Johnson provide assistance to Chatman, Johnson said, "We were playing around with the gun. She had the gun and she's—the gun was loaded. We was [sic] arguing, she threatened to take her life."

Johnson put Chatman on the floor as the dispatcher directed and put the gun outside the front door. He brought his infant daughter and placed her on the bed. He checked whether Chatman was breathing and put pressure on the gunshot wound with a towel. Deputy Sheriff Noel Witty arrived at about 7:25 p.m. In the bedroom, he saw Chatman on her right side with her right arm extended above her head. Johnson was kneeling near Chatman's head. Another deputy (Adam Zeko) did a pat down search of Johnson and handcuffed him. Zeko observed Johnson to be "rather calm" given the circumstances.

Deputy Witty took Johnson to the living room and asked what had happened. Johnson said, "I was playing with my gun, racking it back and forth, and it went off, shot her in the stomach." Deputy Witty then read Johnson his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U. S. 436), and Johnson continued speaking with him.
Johnson said Chatman had argued with her grandmother earlier in the day. When she returned home, Chatman and Johnson argued because she thought he was cheating on

her. Around 6:00 p.m., he said, he and Chatman and their baby went to the park "to talk it out." They "worked everything out" and were back home at about 6:30 p.m.

With their daughter asleep in a bedroom downstairs, he and Chatman began drinking in their bedroom upstairs. Johnson said he got his gun so he could clean it and sat down in a chair near the computer. He said he racked the slide back and forth four or five times and the gun went off. Chatman was standing at the foot of the bed, on the other side of the room from where Johnson was sitting. He heard her say, "Aah," and she was holding her abdomen. When he lifted her shirt, he said, he saw that she had been shot. He helped her to the floor and called 911. He went outside to leave the gun at the door, went back to help Chatman, then went downstairs to get his daughter because he said she was crying and brought her to the upstairs bedroom.

When Deputy Witty first saw Johnson kneeling by Chatman, he was not crying and had no tears in his eyes; he showed no remorse and appeared to be more concerned about what would happen to his daughter than to Chatman. He told Deputy Witty, "You make one mistake and it ruins your life." Johnson did not appear to be under the influence of any intoxicant. Deputy Witty did not see any cleaning instruments or oil ordinarily used to clean firearms in the residence.

At about 12:30 a.m. on March 3, Sergeant Ewing and Detective Kinney conducted a recorded interview with Johnson. Johnson said, "I wasn't trying to shoot her. I was playing with a gun. I was cocking it back [and] forth." He said the 9 millimeter gun was registered in his name, and he had owned it for two or three years. He said he kept it in a holster, and "always ke[pt] it armed and not cocked," with the safety on.

Before the shooting, Johnson said he and Chatman had been arguing, "because she'll find knickknacks to argue about. You know females." She was upset "about cheating stuff"—"[a]bout me being on MySpace with the girls and stuff." Asked whether either one had pushed the other around, he initially said he didn't believe so, but then

said, "I think she—yeah, she pushed me." Then, he said he pushed her on the bed and she yelled. "I was like, dude, ain't nobody going to hit you, and I walked out."

After that, Johnson said, he and Chatman went to the park with the baby "to let stuff go" and then it was calm and they were getting along. When they got home, they put the baby to sleep downstairs and started relaxing in their bedroom upstairs. He said they each had three beers and "Sparks," an "energy alcohol drink." He knew she was "very irritated" by "the way she was in taking her alcohol, she don't drink like that."

After relaxing for about 10 or 15 minutes, Johnson said, he took the gun out of the closet and left it on the dresser. He said the magazine was fully loaded but there was no round in the chamber at first and the safety was on. Then, he didn't know what made him pick it up again and go back and sit at the computer. "We were just talking and talking and talking and just bullshitting and drinking." Then he grabbed the gun and "just kept going like this, because it felt like it was jamming or something." He hadn't oiled it or taken it apart. He said he "just kept doing it" and "it just slipped and said pow."

When he cocked it the first time, he said, a bullet "came up." Chatman was standing on his side of the bed and was about to sit at the computer to do her homework. She may have been trying to get to the phone. Johnson just kept moving the slide back and forth "fast," but said he was stopping it because he "kn[e]w if you just release it after it's cocked," the gun could go off. His finger was on the trigger. The gun went off. He saw she was bleeding from her stomach and called 911. "I was just being stupid. Well, just be honest, it was being stupid. There was no explanation. It was just stupidity." "Just screwed my life."

He said he and Chatman had been living together for three or four years. "We have our knickknacks like every other couple. It ain't like no super like, oh, there's some violent shit going on." He said Chatman would think he was "out catting around," and "it's like, hey, if you think I'm doing all this, you got to be doing something because you thinking I'm doing all this." One of Chatman's earrings was found on the bedroom floor

where paramedics treated her, and the other was found on the bed. Johnson said he remembered her wearing one earring, and her ear was bleeding when he laid her down on the floor, but said, "This isn't like no domestic like where I was beating her ass and decided to shoot her."

Chatman died as a result of the gunshot wound.

Johnson was charged with one count of murder (Pen. Code, § 187, subd. (a) [all further statutory references are to the Penal Code]), with firearm allegations pursuant to section 12022.53, subdivisions (b) through (d).

At trial, the People presented evidence of the facts summarized above. The jury heard Johnson's 911 call as well as his police interview. The medical examiner (Vadim Poukens) conducted Chatman's autopsy. She had a gunshot wound above her belly button. The bullet traveled through her liver, intestines, mesentery, and aorta before ending up in her fourth lumbar vertebrae; the bullet's trajectory was from the front to the back and slightly downward. Chatman also had a bruise below her right ear and another bruise on the corner of her right eye. There was a laceration with a surrounding abrasion behind her right ear which was not caused by Chatman's earring; the medical examiner opined it was caused by a blow to the side of the head with a blunt object, such as a handgun. In addition, Chatman had small abrasions on the inside of her lips.

Based on the police investigation, it appeared Johnson was sitting about eight feet, four inches away from Chatman when he shot her. An expert in crime scene reconstruction (Sergeant Paul Delhauer of the Los Angeles County Sheriff's Department) opined the bullet's trajectory did not correspond to Johnson's account that he was sitting while Chatman was standing; because Chatman's liver was perforated by the bullet, she had to have been bent at the waist when she was shot, and the shooter had to be standing up, above the level of the entry wound. According to Delhauer, Johnson's description was "not at all" possible. Further, Delhauer opined, all of the injuries to Chatman's face were consistent with having been hit with a gun.

Chatman's brother (Ronald Chatman Jr.) testified that his sister had changed after she started dating Johnson. She became "quiet," acted as though she were hiding something and "would always have her head to the ground." She looked "scared like she want[ed] to say something, but she didn't have the courage to." Johnson made fun of Chatman because she stuttered; he was disrespectful and would tell her she was ugly. She was more talkative when Johnson was not around.

Four days before the shooting, Johnson told Chatman's brother in a phone conversation, "out of nowhere, [']I'm going to be like Chris Benoit.['] He's the wrestler who killed his family. 'I'm going to kill me, the baby, and Ronisha.'" Johnson started laughing so Ronald did not take it seriously.

Chatman's grandmother (Javelon Emanuel) testified Chatman had no injuries or bruising when she saw Chatman at the park the afternoon of the shooting; their conversation was upbeat and they did not argue.

The firearms examiner (Deputy Ivan Chavez of the Los Angeles County Sheriff's Department) who examined Johnson's gun testified that the gun, including its five safety features, was functioning properly.

Johnson's defense included testimony from a math instructor regarding angles and trajectories.

The jury found Johnson guilty of first degree murder and found true the three firearm allegations.

The trial court sentenced Johnson to state prison for a term of 50 years to life, calculated as follows: 25 years to life on count one plus a consecutive term of 25 years to life for the firearm enhancement pursuant to section 12022.53, subdivision (d).[1] (Johnson's motion for a new trial was denied.)

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[1] Johnson was also sentenced to 10 years on the enhancement under subdivision (b) of section 12022.53 and 20 years for the subdivision (c) enhancement, but sentence was stayed in these respects.

Johnson appeals.

DISCUSSION

According to Johnson, the evidence was insufficient as a matter of law to support the jury's finding of premeditation and deliberation. We disagree.

"'"'Generally, there are three categories of evidence that are sufficient to sustain a premeditated and deliberate murder: evidence of planning, motive, and method. [Citations.] … But these categories of evidence, borrowed from *People v. Anderson* (1968) 70 Cal.2d 15, 26–27 [73 Cal. Rptr. 550, 447 P.2d 942], 'are descriptive, not normative.' [Citation.] They are simply an 'aid [for] reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse.' [Citation.]" [Citation.]' (*People v. Elliot* (2005) 37 Cal.4th 453, 470–471 [35 Cal. Rptr. 3d 759, 122 P.3d 968] (*Elliot*).) These three categories are merely a framework for appellate review; they need not be present in some special combination or afforded special weight, nor are they exhaustive. (See, e.g., *People v. Brady* (2010) 50 Cal.4th 547, 562 [113 Cal. Rptr. 3d 458, 236 P.3d 312] (*Brady*).)" (*People v. Booker* (2011) 51 Cal.4th 141, 173.)

Substantial evidence supports the jury's determination Johnson acted with premeditation and deliberation and committed first degree murder. First, as to planning, he went to the closet to get his gun, then went to retrieve it again after putting it down on the dresser. He had to take it out of a holster in order to shoot it. He knew a bullet was in the chamber and he pulled the trigger. He also told Chatman's brother he would kill Chatman, himself and their baby four days before fatally shooting Chatman. The evidence supports an inference of planning. (*People v. Elliot, supra,* 37 Cal.4th at p. 471.) Second, according to Johnson himself, he shot Chatman after they argued about him cheating and pushed each other, and he was disrespectful of Chatman and made fun of her, supporting an inference of motive. (*People v. Anderson, supra,* 70 Cal.2d at p.

27.) Third, after arguing with Chatman and apparently "pistol whipping" her, Johnson shot her in a "vital area" at close range so the manner in which the shooting occurred also supports the inference of premeditation and deliberation. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1082.)

In addition, Johnson changed his story so many times supporting an inference of consciousness of guilt rather than any accident. He said he and Chatman had been playing around with the gun; he said they had argued and she had threatened to kill herself; he said he had taken the gun out to clean it but there were no cleaning supplies to be found. The record supports Johnson's conviction.

Johnson also says, notwithstanding California Supreme Court authority to the contrary, (1) the imposition of a weapons use enhancement pursuant to section 12022.53, subdivision (d), for a defendant convicted of murder violates the "multiple conviction rule" under California law as well as federal jeopardy principles and (2) federal double jeopardy should apply to his "multiple punishment within a unitary trial." Johnson acknowledges our obligation to follow our Supreme Court's holdings in *People v. Izaguirre* (2007) 42 Cal.4th 126 and *People v. Sloan* (2007) 42 Cal.4th 110 to the contrary but asserts these arguments to preserve his claims for subsequent review.

DISPOSITION

The judgment is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J. **ZELON, J.**